



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JUN - 2 2011**

Karen Harrington  
2000 NW 150<sup>th</sup> Avenue  
Suite 2120  
Pembroke Pines, FL 33028

RE: MUR 6437  
Karen Harrington  
Karen Harrington for Congress and  
Karen Harrington, in her official capacity as treasurer

Dear Ms. Harrington:

On December 7, 2010, the Federal Election Commission ("Commission") notified you and Karen Harrington for Congress of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 26, 2011, the Commission found, on the basis of the information in the complaint and information provided by your committee, that there is no reason to believe that you and Karen Harrington for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. § 439a(b). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Peter G. Blumberg  
Assistant General Counsel

cc: Joseph Schirra

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 RESPONDENTS: Karen Harrington MUR: 6437  
5 Karen Harrington for Congress and  
6 Karen Harrington, in her official capacity  
7 as treasurer  
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9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission  
11 ("the Commission") by Joseph Chmielarz. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges  
12 that Karen Harrington and Karen Harrington for Congress and Joseph Schirra, in his official  
13 capacity as treasurer ("Committee"), violated 2 U.S.C. § 439a, the personal use provision of the  
14 Federal Election Campaign Act of 1971, as amended ("the Act"), by airing television ads in  
15 support of Harrington's candidacy that also allegedly promoted her business, Rickey's  
16 Restaurant and Lounge. Specifically, the complaint alleges that Harrington converted campaign  
17 funds to personal use because her campaign ads promoted "a business establishment and  
18 products" that she had "an ownership interest in" and from which she would "continue to receive  
19 personal and monetary gain." Complaint at 3. However, based on the Committee's response  
20 and a review of the ad in question, we conclude that the ad was campaign activity and did not  
21 constitute personal use of campaign funds by the candidate. Therefore, the Commission found  
22 no reason to believe that the candidate and Committee violated 2 U.S.C. § 439a.

**II. FACTUAL BACKGROUND**

Karen Harrington was a candidate for United States Congress from Florida's 20<sup>th</sup> Congressional District. Her campaign Committee aired a sixty-second television advertisement entitled "Toddler Gets It; Debbie Wasserman Schultz Does Not," that promoted Harrington's candidacy and criticized her opponent, Debbie Wasserman Schultz. The first forty seconds of the advertisement features footage of Rep. Schultz and shows Harrington making critical statements about Schultz's job performance in Congress. Harrington also discusses her own campaign platform, including cutting taxes, reducing spending, and creating jobs. During the final twenty seconds of the advertisement, Harrington discusses her background as a business owner while images of her business, Rickey's Restaurant and Lounge ("Rickey's"), briefly appear on the screen. The images, which include photographs of signs displaying the business name and video footage of the inside of the restaurant, appear as insets on the screen for approximately five seconds. The image on the screen then changes to Harrington holding a bottle of Rickey's chicken wing sauce for approximately three seconds while she says that she "make[s] the best chicken wings in South Florida." The advertisement is transcribed below.

<b>On Screen</b>	<b>Voiceover</b>
A toddler sitting on a sofa, petting his stuffed animal (elephant). He picks up a remote control and turns the tv on.	Instrumental music playing

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<p>A close up of Debbie Wasserman Schultz (DWS) speaking. The words on the tv read: "Rep. Wasserman Schultz (D) Florida</p> <ul style="list-style-type: none"><li>• Member of Congress since Jan. 2005</li><li>• House Committee on Appropriations Member</li><li>• House Judiciary Committee Member"</li></ul> <p>At the bottom of the screen it reads: "Jobs Spin Doctors"</p>	<p>DWS speaking: "We will create more jobs in this year than the entire eight years of the presidency."</p>
<p>A toddler sitting on a sofa.</p>	<p>The toddler puts his hands over his eyes and says "Oh no."</p>
<p>A split screen with Fox 5 interviewer on one side and DWS on the other side.</p>	<p>DWS speaking: "People are feeling good about how things are going." The interviewer says "Last question."</p>
<p>A toddler sitting on a sofa.</p>	<p>The toddler reaches for the screen and says "stop."</p>
<p>DWS being interviewed on Politicstv.com</p>	<p>DWS speaking: "And Speaker Pelosi is making history in more than one way."</p>
<p>The toddler picks up the remote and changes the channel.</p>	
<p>Karen Harrington (KH) speaking. Inset pictures of DWS and Nancy Pelosi appear on the screen. The words "Karen Harrington For Congress" are at the bottom.</p>	<p>KH speaking: "We know what Debbie Wasserman Schultz cares about. Pleasing her mentor Nancy Pelosi and moving up the Democratic ranks in Washington."</p>
<p>KH speaking. Later, these words appear: "cutting taxes, reducing spending, creating jobs."</p>	<p>"Here's what I care about: cutting taxes, reducing spending, creating jobs."</p>

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KH speaking. An inset of a tv with DWS appearing on different shows. These words appear under the tv: "Debbie Wasserman Schultz knows how to get on TV."	"As a Washington insider, Debbie Wasserman Schuliz knows how to get herself on tv."
KH speaking. An inset with video footage of the inside of restaurant and an inset of photographs of two signs displaying the name of Rickey's restaurant appear on the screen. At the bottom of the screen these words appear: "create jobs, live within a budget, stretch every dollar."	"But as a restaurant owner, I know how to create jobs, live within a budget, stretch every dollar."
KH speaking and holding a bottle of chicken sauce. At the bottom of the screen it reads "Paid for by Karen Harrington for Congress. Approved by Karen Harrington."	"And make the best chicken wings in South Florida."
KH speaking.	"I'm Karen Harrington and I approve this message."
A toddler holding his stuffed animal (elephant) and smiling.	The toddler says "I like chicken"
The frame reads: "This message is approved by: Republican [sic] Toddlers Committee. Paid for by Karen Harrington for Congress Inc." There is a picture of an elephant.	

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A review of Harrington's YouTube Channel reveals that the campaign produced a

second, shorter version of the same advertisement entitled "Harrington Cares," without images of the toddler who appeared in the longer ad. It is not known exactly when the advertisements may have been broadcast on television, but they were uploaded to the Committee's YouTube channel on October 13, 2010. The Committee's reports filed with the Commission disclose disbursements totaling \$87,480.56 made to media vendor Jamestown Associates, in September and October 2010, for campaign mailers, video shoots, and commercial air time. *See*

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1 Committee's 2010 October Quarterly and Post General Reports. However, it is not known  
2 which disbursements specifically relate to the advertisement in question.<sup>1</sup>

3 One advertisement for "Rickey's" appears to contain some of the same video footage  
4 featured in Harrington's campaign ad at issue here. *RickeysGrill's Channel*,  
5 <http://www.youtube.com/user/RickeysGrill> (uploaded to YouTube on September 2, 2010; last  
6 accessed May 11, 2011). However, it is unclear whether Rickey's aired any other  
7 advertisements before it began using this footage. Other videos viewed on Harrington's  
8 YouTube Channel reveal that Harrington frequently mentioned being a small business owner  
9 during the course of her campaign, including when she announced her candidacy for the 2010  
10 election. Harrington's campaign website for her 2012 candidacy for U.S. Congress also  
11 promotes her qualifications as a small business owner. *See, e.g., Karen Harrington Declares*  
12 *Candidacy for U.S. Congress in FL-20*, March 28, 2011,  
13 <http://www.karenforcongress.com/press-room/harrington-declares-candidacy>.

14 The complaint alleges that Harrington converted campaign funds to her personal use  
15 when she "regularly ran television advertisements promoting a business establishment and  
16 products." Complaint at 3. The complaint argues that the "candidate's campaign must have  
17 spent a significant and identifiable amount of money to include the 'b-roll' of the two different  
18 clips of the Rickey's name as well as the two different bar scenes in the campaign commercial"  
19 and alleges that one-third (twenty seconds) of the commercial promoted the candidate's

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<sup>1</sup> The disbursements to Jamestown Associates include the following payments: \$6,170.58 on 9/13/2010 for "debt owed on mailer and video;" \$31,100 on 10/18/2010 for "Video shoot and commercial air time;" \$44,135 for "tv commercial air time;" and \$3,405 on 10/29/2010 for "campaign mailers, video shoot and commercial air time." *See* Committee's 2010 October Quarterly and Post General Reports. The Committee also disclosed disbursements to Shark Tank Media LLC and Facebook for Internet ads.

1 business. *Id.* at 4. According to the complaint, in addition to being aired on television, the  
2 advertisement in question was also available on the Committee's website and on YouTube. *Id.*

3 The Committee submitted a response that explained that Jamestown Associates created  
4 the ad in question and argued that the expenses for the ad were "in connection with a campaign  
5 for Federal office."<sup>2</sup> The Committee treasurer stated that "I have no reason to believe that Karen  
6 Harrington would have made these payments to Jamestown Associates if not for her election  
7 campaign." Response at 2.

8 Available information indicates that "Rickey's Restaurant and Lounge" has been a  
9 family-owned business for over 35 years and has three locations in South Florida. *See About*  
10 *Karen*, <http://www.karenforcongress.com/about-karen> (last accessed March 28, 2011). The  
11 business has been incorporated in the State of Florida since 1980, and Harrington has been listed  
12 as a corporate officer in the company's corporate documents since 2006. *See Florida*  
13 *Department of State, Division of Corporations*, <http://www.sunbiz.org> (including corporate  
14 documents for Rickey's Restaurant and Lounge, Inc. and Rickey's at Silver Lakes, Inc.). It is  
15 not clear what percentage, if any, of the business belongs to Harrington. According to  
16 Harrington's campaign website, the candidate "has managed the business herself for almost 30  
17 years."

18 **III. LEGAL ANALYSIS**

19 The Act prohibits any person from converting contributions to a Federal candidate to  
20 personal use. 2 U.S.C. § 439a(b)(1); 11 C.F.R. § 113.2(e). "Personal use" is defined as "any use  
21 of funds in a campaign account of a present or former candidate to fulfill a commitment,

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<sup>2</sup> Karen Harrington did not submit a response to the complaint on her own behalf. The Committee's response was submitted by Mr. Schirra, the treasurer at the time the complaint was filed with the Commission.

1 obligation or expense of any person that would exist irrespective of the candidate's campaign or  
2 duties as a Federal officeholder." See 11 C.F.R. § 113.1(g); see also 2 U.S.C. § 439a(b)(2);  
3 2 U.S.C. § 431(11) (defining "person" under the Act). Commission regulations list a number of  
4 purposes that would constitute personal use *per se*, but where a specific use is not listed, the  
5 Commission makes a determination, "on a case-by-case basis," whether an expense would fall  
6 within the definition for personal use. 11 C.F.R. § 113.1(g)(1)(i) and (ii). In previous matters,  
7 funds were considered converted by individuals to personal use when they were used to pay for  
8 personal expenses, such as Broadway show and football tickets, haircuts, credit card bills, and  
9 personal trainer payments. See, e.g., MUR 5962 (Istook for Congress) Conciliation Agreement;  
10 MUR 5895 (Meeks for Congress) Conciliation Agreement.

11 The Commission's "long-standing opinion [is] that candidates have wide discretion over  
12 the use of campaign funds." Explanation and Justification, *Expenditures; Reports by Political*  
13 *Committees; Personal Use of Campaign Funds*, 60 *Fed. Reg.* 7862, 7867 (February 9, 1995). "If  
14 the candidate can reasonably show that the expenses at issue resulted from campaign or  
15 officeholder activities, the Commission will not consider the use to be personal use." *Id.*  
16 at 7863-64.

17 According to the complaint, because the Committee paid for the advertisement at issue in  
18 this matter and the ad mentions Rickey's Restaurant and Lounge, it ostensibly provided Rickey's  
19 a benefit through its broadcast, and by extension, to Harrington, the part-owner of the business.  
20 Complaint at 3. In addition, if the campaign spent money to produce the "b-roll" of the  
21 restaurant footage, the complainant argues that the Committee provided a benefit to Rickey's  
22 and, by extension, to Harrington, by providing this service to the restaurant. *Id.* at 3-4.  
23 However, it is unknown how much Harrington, as part-owner of Rickey's, could have personally

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1 benefited from the production and broadcast of the ad, or from the brief references to the  
2 business in the ad. Further, the expenses related to the ad are not in the category of any *per se*  
3 violations of personal use, such as football tickets or haircuts, where there exists a clear personal  
4 benefit to the individual utilizing the funds.<sup>3</sup>

5         Instead, Harrington's use of campaign funds for the ad at issue appears to qualify as  
6 "campaign or officeholder activities," as contemplated in the Commission's Explaaation and  
7 Justification. *Supra* at 7. The Committee's resprase makes clear that the ad was produced as  
8 part of the congressional campaign by the campaign's media vendor, Jamestown Assooiates, and  
9 the Committee denies that it would have paid the vendor "if not for [Harrington's] election  
10 campaign" (Response at 2). Further, the content of the ad itself helps demonstrate that it is best  
11 characterized as "campaign activity." Viewed in its entirety, it appears the ad sought to highlight  
12 Harrington's experience or success as a local business owner in order to help her campaign, and  
13 not to promote her business.<sup>4</sup> Specifically, the inserts showing images of Rickey's first appear  
14 on a small portion of the screen next to a larger image of Harrington at the very moment she  
15 informs viewers that she is a "restaurant owner" and that, as a result of her occupation, she  
16 knows "how to create jobs, live within a budget [and] stretch every dollar." *See supra* at 4.  
17 Accordingly, the images appear to have been primarily designed to amplify Harrington's  
18 qualifications and positions, contrasting herself from her opponent. Harrington's tag line, "and

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<sup>3</sup> In addition to identifying *per se* examples of personal use, the "personal use" definition generally addresses situations where political committees absorb obligations or expenses of a candidate that exist irrespective of the candidate's campaign. See 11 C.F.R. § 113.1(g). However, in this instance, it is difficult to say whether Harrington's, or Rickey's, obligations for the costs of the advertisement at issue existed irrespective of the campaign. We have no information as to the number or frequency of ads that Rickey's may have broadcast prior to the campaign or that Rickey's somehow cut back on its advertising in anticipation that the Committee's advertising would subsidize Rickey's.

1 make the best chicken wings in South Florida,” in context, appears to have served merely as a  
2 humorous conclusion to the preceding discussion of her qualifications for political office.  
3 Moreover, the reference to the Rickey’s corporate name and product appeared for only five to  
4 eight seconds of the 60-second ad. The Commission gives candidates wide discretion over the  
5 use of campaign funds, and incurring expenses for production of campaign advertisements  
6 generally falls within that discretion. *See* 60 *Fed. Reg.* at 7867. Because of the campaign focus  
7 of the ad, it appears to be within the candidate’s discretion to fund the ad.

8 Thus, because no campaign contributions appear to have been converted to personal use,  
9 the Commission finds no reason to believe that Karen Harrington and Karen Harrington for  
10 Congress and Karen Harrington, in her official capacity as treasurer, violated 2 U.S.C. § 439a(b).

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<sup>4</sup> Typically, the Commission has addressed matters involving business advertisements that either mentioned or featured the business owner who was also a federal candidate and not matters, such as this, where a campaign ad features a business establishment. *See, e.g.*, MURs 5410 (Oberweis), 5517 (Stork) and 5691 (Whalen).